

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

BAE SYSTEMS INFORMATION AND
ELECTRONICS SYSTEMS INTEGRATION
INC.

Plaintiff,

v.

SPACEKEY COMPONENTS, INC.

Defendant.

Civil Action No. 10-CV-370-LM

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
ON PLAINTIFF'S COUNTS III AND IV**

NOW COMES plaintiff BAE Systems Information and Electronics Systems Integration Inc. ("BAE Systems"), by and through its attorneys, Devine, Millimet & Branch, P.A., and respectfully moves pursuant to Fed. R. Civ. P. 56 for summary judgment on its Counts III and IV. In support of this Motion, BAE Systems states as follows:

1. BAE Systems brings this action in principal part to collect payment for goods delivered to the defendant SpaceKey Components, Inc. ("SpaceKey"). Specifically, between December 2009 and January 2010, BAE Systems delivered to SpaceKey semiconductor integrated circuits pursuant to purchase orders SpaceKey submitted to BAE Systems.

2. All of the sales to SpaceKey were made pursuant to BAE Systems' Terms of sale, which require payment by SpaceKey 30 days after delivery of the goods or the date of invoice for the goods. BAE Systems fully performed its obligation to deliver the goods ordered by SpaceKey, yet SpaceKey has failed and refused to submit payment for the outstanding balance

due and owing for the goods. That balance now stands at \$1,851,757, plus interest, costs and attorneys' fees.

3. BAE Systems now moves for summary judgment on its claims for breach of contract (Count IV) and account stated (Count III). There is no material dispute of fact that BAE Systems delivered all of the goods SpaceKey ordered and that SpaceKey accepted the goods without reservation. By failing to pay for the goods, SpaceKey has breached its contractual obligation to BAE Systems.

4. Likewise, SpaceKey is liable to BAE Systems for an account stated totaling \$1,851,757 because SpaceKey has never disputed that this is the amount owed for the goods BAE Systems delivered.

5. Finally, BAE Systems is entitled to recover its costs, expenses and attorneys' fees incurred to collect the balance due pursuant to the Terms of Sale.

6. In further support of this Motion, BAE Systems refers the Court to the Memorandum of Law filed in support of this Motion, which BAE Systems incorporates herein by reference. L.R. 7.1(a)(2).

7. Due to the dispositive nature of the relief sought by this Motion, BAE Systems did not seek assent of the defendant. L.R. 7.1(c).

WHEREFORE, BAE Systems respectfully requests this Honorable Court:

- A. Grant summary judgment to BAE Systems on its claims for breach of contract and account stated at Counts III and IV;
- B. Grant BAE Systems its costs, expenses and attorneys' fees, as agreed by the parties under the Terms of Sale; and

C. Grant to BAE Systems such other and further relief as this Court deems just and equitable.

Respectfully submitted,

**BAE SYSTEMS INFORMATION AND
ELECTRONICS SYSTEMS
INTEGRATION INC.**

By its attorneys,

DEVINE, MILLIMET & BRANCH, P.A.

Dated: July 22, 2011

/s/ Jonathan M. Shirley

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CERTIFICATE OF SERVICE

I, Jonathan M. Shirley, hereby certify that a copy of the foregoing Plaintiff's Motion for Summary Judgment on Plaintiffs Counts III and IV was this day served via the Court's Electronic Filing System on counsel for the defendant.

/s/ Jonathan M. Shirley
Jonathan M. Shirley